

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 7, 1999
at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Jodi Pauley, Committee Secretary
Valencia Lane, Legislative Services Division

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 63, 1/7/1999; SB 32,
1/7/1999; SB 112, 1/7/1999
Executive Action: SB 32

HEARING ON SB 63

Sponsor: SEN. LINDA NELSON, SD 49, Medicine Lake

Proponents:

Cathy Kendall, Board of Crime Control
Beth Baker, Department of Justice

Tim Shanks, Police Protection Assoc.

Opponents: None

Opening Statements By the Sponsor:

SENATOR LINDA NELSON, SD 49, Medicine Lake, presented **SB 63**. The primary concern for this bill is to make Montana law consistent with federal law regarding sex offender registration.

EXHIBIT(jus04a01)

Proponents Testimony:

Cathy Kendall, Board of Crime Control, spoke in favor of **SB 63**.

EXHIBIT(jus04a01)

Beth Baker, Department of Justice, said it is important to keep Montana law consistent with laws throughout the country. There are a lot of offenders from out of state moving into Montana. There are problems with how the state's registry applies to other state offenders. Ms. Baker suggested an amendment to the bill, on page 3, line 23, changing the age limit from 18 to 12. Requiring mandatory lifetime registration for all incest offenders even if the victim is 16 or 17 is not consistent with federal law and may complicate the registry. This bill will help protect communities from sexually violent predators and help keep law enforcement informed of offenders in their communities.

Tim Shanks, Police Protection Assoc., spoke in favor of **SB 63**.

{Tape : 1; Side : A; Approx. Time Counter : 9:11 a.m}

Opponents Testimony: None

Questions from Committee Members and Responses:

SENATOR SUE BARTLETT, asked that on page 2, line 12, the term violent offense if being expanded to include judicial officer or peace officer? **Cathy Kendall** said the addition is to conform to federal statute.

SENATOR BARTLETT asked if federal law requires registration for someone who has assaulted a peace officer? **Cathy Kendall** said this was correct.

SENATOR BARTLETT asked why the language on lines 7-9, page 3 is being stricken which deals with petition of an offender who is attempting to get off of the registry list and why is this? **Cathy Kendall** said this is to conform with federal statutes.

SENATOR BARTLETT asked if the Board of Crime Control is in favor of the proposed amendment by changing the age from 18 to 12.

Cathy Kendall said the board would support this suggested change.

SENATOR BARTLETT asked if they change the age to 12, what happens to the period between 12 to 18 where it is still a crime and consent cannot be used as a defense. **Beth Baker** said it will not cause a problem because under section 1, page 2, it is still requiring registration for offenders who commit incest if the victim is under 18 and the offender is 3 years or more older. The person would still be convicted and would have to register, but after ten years could petition to be removed from the registry if the victim was 12 or older. It does not affect the conviction or the registration requirements, just the mandatory lifetime registration.

SENATOR RIC HOLDEN asked why line 30, on page 1 was struck. **Beth Baker** said when that provision was first added there was some reluctance about putting incest in the registration requirements. The change they are making does not change that policy, they are still targeting registration toward offenders who commit offenses against minors. The board of Crime Control wanted to put in the requirements the offender be three years older than the victim so they wouldn't involve situations of consent.

CHAIRMAN LORENTS GROSFIELD asked on page 1, line 29, if this is how the federal law reads about indecent exposure. **Beth Baker** said yes. Federal law seeks registration for any sexual offense against a minor victim.

CHAIRMAN GROSFIELD said if they had an 11 or 12 year old child and an 8 or 9 year old child this satisfies the 3 year limitation. Are children of this age going to be registered for life? **Beth Baker** said no, an offender must have the purpose of arousing or gratifying the person's own sexual desire. Children of that age are not prosecuted under the indecent exposure statute. Also under the youth court act, registration is optional.

Closing by Sponsor:

SENATOR NELSON said there will be no fiscal impact. **EXHIBIT (1)** She closed on the bill.

{Tape : 1; Side : A; Approx. Time Counter : 9:23 a.m.}

HEARING ON SB 32

Sponsor: SENATOR DUANE GRIMES, SD 20, Clancy

Proponents:

Jo Acton, Montana Women's Prison
Diana Leibinger-Koch, Department of Corrections
Tim Shank, Montana Police Protection Assoc.
Kate Cholena, Montana Women's Lobby

Opponents: None

Opening Statements By the Sponsor:

SENATOR DUANE GRIMES, SD 20, Clancy, presented SB 32. It prohibits employees who have disciplinary authority over incarcerated inmates from having sexual contact with them. This will help with security and the human rights issue that is involved.

Proponents Testimony:

Jo Acton, Montana Women's Prison, spoke in support of SB 32.
EXHIBIT (jus04a02)

Diana Leibinger-Koch, Department of Corrections, rose in support of SB 32. **EXHIBIT** (jus04a03)

{Tape : 1; Side : A; Approx. Time Counter : 9:32 a.m.}

Tim Shank, Montana Police Protection Assoc. said his association supports SB 32.

Kate Cholena, Montana Women's Lobby, said they also support this bill.

Opponents Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. GRIMES closed on SB 32.

HEARING ON SB 112

Sponsor: SENATOR EVE FRANKLIN, SD 21, Great Falls

Proponents:

Bill Unger, Department of Justice
Jim Smith, MT Sheriff and Peace Officers Assoc.
Tim Shank, Montana Police Protection Assoc.

Opponents: None

Opening Statements By the Sponsor:

SENATOR EVE FRANKLIN, SD 21, Great Falls, presented **SB 112.** Currently, there is a DNA registry of sexual offenders and the Department of Justice would like to be able to make DNA testing more easily accomplished through a buccal swab as opposed to a blood drawing. The buccal swab is less intrusive and doesn't involve blood drawing. The Department of Corrections will collect this evidence and be responsible for the information. It also allows for the genetic evidence gathered on all sexual and violent offenders who are adjudicated. It gives judges discretion to request that DNA be gathered when the individual is not actually convicted of a felony. The bill also redefines fingerprinting.

Proponents Testimony:

Bill Unger, Department of Justice, spoke in favor of SB 112.
EXHIBIT (jus04a04)

Jim Smith, MT Sheriff and Peace Officers Assoc., said this bill is at the heart of criminal investigative work and is needed by law enforcement. He believes Montana was the first state in the country in which a homicide conviction was obtained based upon a DNA sample.

Tim Shank, Montana Police Protection Assoc., said without DNA testing a lot of homicides and crimes could go unsolved. This benefits law enforcement and with crimes increasing this type of technology will help solve more crimes.

{Tape : 1; Side : B; Approx. Time Counter : 9:46 a.m.}

Opponents Testimony: None

Questions from Committee Members and Responses:

SENATOR DOHERTY said section 7 has a retroactive applicability and is this a concern constitutionally. **Bill Unger** said the people that this retroactivity applies to are already under law

to provide a DNA sample. The reason for the retroactivity is it is costly for some agencies to draw blood, and to do a buccal swab is easier and safer.

SENATOR DOHERTY said this would only apply to those who already have to supply DNA and this is an alternative for agencies to collect the DNA. **Bill Unger** said this was correct.

SENATOR BARTLETT asked if there are offenders convicted of sexual offenses whose sentences require them to go through the sexual offender treatment program who refuse to do that or cannot successfully complete the program? **Mike Mahoney, Montana State Prison**, said yes, there are some offenders who have a difficult time completing treatment programs.

SENATOR BARTLETT asked if there are offenders in the prison who refuse to apply for parole no matter what their crime is and once they are discharged there is no supervision. **Mr. Mahoney** said yes there are some inmates who do not apply for parole and do not choose to participate in any type of program. If inmates are discharged, the prison still has to report back to district court and say what category a sex offender may be in. If he is identified as a level three offender then they can go through the courts and report that person to the community.

SENATOR BARTLETT asked if there may be some prisoners who choose to discharge their sentences in order to not give a DNA sample. **Steve Bullock, Department of Justice**, said right now they only have half of the offenders that should be registered. There was some thought that they may be able to make it a misdemeanor crime if they refused to give a DNA sample.

SENATOR BARTLETT asked if someone who discharges their sentence would not have to give a DNA sample? **Mr. Bullock** said that is correct.

{Tape : 1; Side : B; Approx. Time Counter : 9:55 a.m.}

CHAIRMAN GROSFIELD asked who this applies to and when and does this deal with sexual crimes or does it deal with all crimes? **Mr. Bullock** said it is sexual and violent crimes as defined in the registry.

CHAIRMAN GROSFIELD asked when are the samples taken. **Mr. Bullock** said normally it is done right after the conviction.

CHAIRMAN GROSFIELD asked if it is voluntary or does the prisoner have no choice. **Mr. Bullock** said it is a requirement by law that they give the sample. The difficulty is if someone refuses to

give the sample then it is no more voluntary than one giving their fingerprints.

CHAIRMAN GROSFIELD asked if they are trying to collect the sample and they are in the vicinity of the offenders face and eyes is there a liability problem. **Mr. Bullock** said the swab is a Q-tip and it could be a liability issue, but it is not as likely as it would be if the agency was drawing blood.

CHAIRMAN GROSFIELD asked if in some cases it may be done forcefully. **Bill Unger** said this issue has not been addressed and if it has to be done forcefully it is usually not collected. A court order could take place in order to make the person give the sample to avoid this problem. Some people will go to the end of their sentence and are not in the database. And sex offenders are likely to re-offend. They are hoping fewer will refuse with the buccal swab rather than the blood draw.

SENATOR BARTLETT asked if the retroactive applicability is correct in referring to section 6 and do we need an amendment here. **Steve Bullock** said why the retroactive applicability is in place is that currently there is only about 50 percent who are in the registry. It is not necessarily for the buccal swabs that the retroactive applicability applies to because from 1995 there are still some individuals whom they have not gotten samples from yet.

SENATOR BARTLETT asked if the methodology is irrelevant to the intent of the retroactive applicability section. **Mr. Bullock** said this was correct.

SENATOR BARTLETT said the intent of that section is to make it a condition of parole for prisoners who otherwise would not have this a condition of their parole. Are prisoners who have not given a sample required to and why? **Mr. Bullock** said if an offender is convicted of a sexual or violent offense as defined in the registry and the county attorney at the time of conviction did not get a blood sample, then it should be collected immediately when they arrive to state prison or upon conviction.

SENATOR BARTLETT asked if the statutes which establish the DNA registry made it a requirement that anyone convicted of a sexual offense was to give a sample and to be incorporated into the registry. Are there instances where from the retroactive date to present that some were required to give a sample and refused. **Mr. Bullock** said it is less refusal than it is slipping through the cracks.

{Tape : 1; Side : B; Approx. Time Counter : 10:05 a.m.}

SENATOR BARTLETT said it is because of the establishment of the registry that anyone convicted has to give a sample. **Mr. Bullock** said that is correct. In order to collect this sample, law enforcement could always get a body search like they do to get fingerprints

Closing by Sponsor:

SENATOR FRANKLIN said the swab is a Q-tip and this would help the liability issue. This bill will strengthen in terms of technology and help in criminal investigation. The question is how do they force someone to give a body part sample, and this is an issue that needs to be worked on, but might not be able to be addressed in this bill. The Department of Corrections will absorb this into their budget and there will be no fiscal impact.

EXECUTIVE ACTION ON SB 32

Motion: **SEN. DOHERTY** moved **SB 32 DO PASS.**

Discussion:

SENATOR BARTLETT said they continue to criminalize additional types of behavior and establish sentences for those crimes and sentencing statutes are hard to understand and apply. Prisons get more and more crowded and society has to deal with it.

CHAIRMAN GROSFIELD said they are dealing with someone who is already in the system and there could be a fiscal impact if additional sentencing is required. Every time they make a crime it costs money.

SENATOR HALLIGAN asked if there are counselors at the Montana State Prison that do not have disciplinary authority. There could also be persons coming in from the outside such as psychiatrists etc. that may not be covered under this bill. **SENATOR GRIMES** said he would work on this.

Vote: Motion carried unanimously.

ADJOURNMENT

Adjournment: 10:15 A.M.

SEN. LORENTS GROSFIELD, Chairman

JODI PAULEY, Secretary

LG/JP

EXHIBIT (jus04aad)